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SUBJECT: S/WCI RAPP'S CONSULTATIONS IN FRANCE (DECEMBER 14)

Classified By: Wallace R. Bain, Political Officer, for reason 1.4 (b/d)

¶1. (C) SUBJECT: French officials on December 14 told S/WCI Ambassador Stephen J. Rapp that they would advise consideration of a French contribution to support the Special Court for Sierra Leone (SCSL) but cautioned that GOF budgetary resources were quite limited and that a contribution might not be possible. They welcomed U.S. participation as an observer to the International Criminal Court (ICC) and agreed that the UN Security Council needed the ability to exercise an oversight function over any attempt to label an action as an "aggression" subject to international sanction. The French agreed with Ambassador Rapp on the need for residual mechanisms during the closing phases of the International Tribunals for Yugoslavia (ICTY) and Rwanda (ICTR). END SUMMARY.

¶2. (C) S/WCI Ambassador Stephen J. Rapp, accompanied by S/WCI Special Assistant Todd Anderson and Embassy AF-assistant, held two meetings with MFA officials in Paris on December 14. The meeting with Jean-Luc Florent (PDAS for Legal Affairs), Olivier Guerot (DAS-equivalent for Human Rights and Humanitarian Affairs), and Ginette de Matha (Advisor to the A/S for Legal Affairs) focused on the SCSL, the U.S. and the ICC, and issues related to the end phases of the ICTY and ICTR. The second meeting, with MFA AF DAS-equivalents Stephane Gruenberg (AF/C) and Frederic Clavier (AF/E), centered on the DRC and its war crimes and human rights problems.

Sierra Leone

¶3. (C) In the meeting with Florent, Guerot, and Matha, Ambassador Rapp began by describing the SCSL as a success story that was nearing the completion of its function with all trials completed except for the trial of Charles Taylor, which was taking place in the Hague. However, because of the way the court was established, it had always been necessary to conduct fund-raising to sustain its operation. Florent noted that the UN had paid some costs, but Ambassador Rapp explained that that had been a one-time injection of emergency funding during the court's second year of operations, which the UN was not likely to repeat. The SCSL's budget was declining as the number of trials decreased. Sending SCSL convicts to Rwanda had gone well. The Taylor trial, including appeals, was likely to end in mid-2011. Florent commented on the large sums paid to

Taylor's lawyers; Ambassador Rapp agreed but commented that such costs were probably warranted in a case involving a head of state.

¶4. (C) Ambassador Rapp said that the U.S. would probably contribute about \$7.5 million of the SCSL's expected budget of about \$20 million for 2010, deliverable in August 2010. In the meantime, the court could face shortages as early as February 2010. Hence the need for additional contributions. He noted France's modest previous contributions in 2006-2008 but the absence of a contribution in 2009. Guerot, who had worked on IO budgets before moving to the human rights portfolio, provided a careful explanation of GOF budget difficulties. He said that any contribution would have to come from the Cooperation budget; there was no funding, or very little, remaining in the UN/IO accounts. He noted that the MFA's budget for voluntary contributions to international organizations had been cut 25 percent in 2009, after having been cut 25 percent in 2008, resulting in severe cutbacks. He said that even making France's mandatory contributions was a strain.

¶5. (C) Florent said that he and his colleagues would signal to their political leaders the need to consider contributing to SCSL but he asked that the U.S. understand France's financial difficulties. He said that the tight budgetary situation would persist indefinitely, especially with respect to voluntary contributions.

¶6. (C) Addressing the costs of war crimes tribunals more

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generally, Ambassador Rapp and the French agreed on the need for more efficient use of resources at the tribunals, the desirability of sharing resources (such as courtrooms) more readily, and, across the board, adoption of sensible measures to reduce expenses. Guerot commented that ICC costs were soaring and that Japan (working with France) was one of the few countries engaged in trying to reduce ICC expenses.

International Criminal Court

¶7. (C) The French welcomed the USG's recent decision to participate in certain ICC activities as an observer. Ambassador Rapp provided background on the decision to work with the ICC, albeit on a limited basis, which he believed would further U.S. interests and provide useful input to the ICC. He observed that the level of U.S. engagement in the ICC would remain a sensitive political issue in the U.S., making it difficult to predict whether U.S. involvement would increase. Ambassador Rapp said the U.S. would attend the ICC Assembly on State Parties Session in New York in March and he believed the U.S. would also be represented at the ICC Review Conference in May/June 2010 as an observer and try to make a positive contribution to the proceedings.

¶8. (C) The most pressing concern, with which the French fully agreed, was the ICC's intention to define "aggression" in the context of a potential criminal act subject to ICC jurisdiction. Ambassador Rapp said that the U.S. would oppose ICC action in this area unless the UN Security Council were given an explicit power to approve or disapprove ICC labeling of a specific act as "aggression." The French agreed that a control mechanism of this sort was necessary and expressed confidence, shared by Ambassador Rapp, that the other members of the P-5 shared that point of view. They agreed that raising this clearly with ICC member states would be an important priority between now and the Review Conference and at the conference itself on appropriate occasions.

End-Phase for ICTY and ICTR

¶9. (C) The French agreed with Ambassador Rapp on the need to begin planning for the closing down of the ICTY and ICTR, bearing in mind that a "residual mechanism" would have to be

established and maintained to address issues that would arise after the two tribunals finished conducting trials. These issues would include records retention, appeals issues, enforcement of judgments, witness protection, possible new claims or cases, treatment of prisoners, and other similar matters that could emerge long after the tribunals themselves ceased trying cases. Ambassador Rapp discussed the ICTR and the 11 fugitive cases (three "high value" cases and eight of lesser value). In lieu of keeping the ICTR fully up and running in case of apprehension of the fugitives, it might be better (and far more cost effective) to transfer the cases to Rwanda. The ICTR's judges, however, might balk, believing that Rwandan standards of justice were not adequate to prosecute the cases fairly. Ambassador Rapp said that one solution might be to allow non-Rwandan judges to participate in any trials in Rwanda, a matter that he had discussed recently with Rwandan President Kagame, who seemed receptive to the idea. Transferring these cases to Rwanda could be a way to ease one of the remaining obstacles to fully winding down the ICTR.

¶10. (C) Florent expressed agreement with this approach, saying that he had met with ICTR Prosecutor Hassan Bubacar Jallow on December 11 and that Jallow said that he was increasingly impressed with the Rwandan justice system. Florent thought, based on Jallow's comment, that the ICTR judges might be more willing to transfer cases to Rwanda if a foreign judge were included in the panel trying a case. Florent cited the need to continue discussion in New York. He understood that creating an exit strategy for ICTY and ICTR would continue over the next three or four years. There were real challenges and many ambiguities, and UNSC members might not all share the same perspective. He said that France favored a "light structure" to carry out residual

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functions, that should by no means include the possibility of reconstituting the courts. Ambassador Rapp reiterated the value of being able to transfer cases to national courts. He also hoped that a system would be developed for safely storing tribunal archives that would allow for easy electronic access while preserving original materials. He also said that a residual office should be maintained in the region (rather than in the Hague or other distant place) to ensure a local presence and as a sign of the international community's continuing commitment.

Meeting with MFA Africa Experts

¶11. (C) During his later meeting with MFA DAS-equivalents Stephane Gruenberg and Frederic Clavier, Ambassador Rapp covered in abbreviated form the main points of his discussion with Florent. Discussion then focused on the ongoing violence in the Great Lakes region, particularly in the DRC, and the dynamics within and among the FARDC, FDLR, and CNDP, elements of all which continued to commit violent acts against each other and against civilian populations. Violence seemed to be on the rise once again. Gruenberg asked about CNDP Chief of Staff Bosco Ntaganda and his whereabouts. Ambassador Rapp stressed the need to try him for a range of crimes, including the use of child soldiers. He had apparently returned to the bush but was reportedly seen recently in Goma, indicating that he had not "disappeared." Ambassador Rapp regretted that there seemed to be a lack of will to apprehend him. On Kimia II, Gruenberg expressed concern about MONUC's support of the FARDC (and mentioned in passing that the next mandate renewal would be for a "five-month duration").

¶12. (C) On programs to reform and improve the justice system in the DRC, Gruenberg said that France was "not a main donor," noting that France had just completed a 3 million euro (about USD 4.5 million) project for the justice system, which he described as support for infrastructure and laboratories to assist criminal investigators. He repeated that these were all done on a relatively small scale.

Ambassador Rapp reviewed U.S. assistance programs to the DRC and to MONUC, with Gruenberg marveling that such assistance was at a "completely different level" from France's. Gruenberg said he hoped that France could become more supportive of Security Sector Reform (SSR) programs, which he thought might gain traction with the new roadmap the upcoming MONUC mandate might delineate. Gruenberg described some of the legal cases involving Rwandans and others from the region who were residing in France or elsewhere in Europe and the legal difficulties of bringing some of them to justice.

¶13. (C) Clavier expressed disappointment with Kenya and its failures on the justice front. He said that France and the EU had contributed to developing the Kenyan legal system but the Kenyans were not using what they had available to them, a point the French had made to PM Odinga, who had recently visited France. Clavier said that he had discussed with Jallow the issue of reforming Rwanda's justice system, which would not be easy, in Jallow's view. After a brief discussion of Sudan and the ICC, Clavier briefed on the re-establishment of relations between Rwanda and France, noting that the GOF was waiting for Rwanda's agreement for the proposed French ambassador (not identified by Clavier). He said that an advance team would soon travel to Rwanda to assess what would be needed to get France's embassy up and running quickly.

¶14. (U) Ambassador Rapp has cleared this message.
RIVKIN